

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)	DOCKET FILE COPY ORIGINAL
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Implementation of the Local)	
Competition Provisions of the)	CC Docket No. 96-98
Telecommunications Act of 1996)	
)	
Interconnection Between Local)	
Exchange Carriers and Commercial)	CC Docket No. 95-185
Mobile Radio Service Providers)	

OPPOSITION OF AT&T CORP. TO PETITIONS FOR RECONSIDERATION

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November 20, 1996

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SUMMARY

The Petitions for Reconsideration seek in various ways to limit, constrain, or muddle these pro-competitive requirements. A number of Petitions request "clarification" of basic dialing parity requirements, while others request reconsideration and alteration of the Commission's rulings regarding non-discriminatory access to operator services, directory assistance, and directory listing. Still others ask the Commission to alter mechanisms for recovery of costs of number administration to favor ILECs. These Petitions offer no basis for reconsideration of the Second Report and Order, because they provide no facts or analysis that show how the Second Report and Order departed from the requirements of the 1996 Act or how the requested relief will further promote exchange competition.

The Commission should reject attempts to limit the scope of the dialing parity requirements of the Second Report and Order. These requirements strike a careful balance -- promoting customer choice in selection of toll carriers while averting undue customer confusion and affording individual states the flexibility to determine methods of customer notification. The Petitions show no reason for the Commission to alter its balanced, pro-competitive framework.

The Commission should also refuse to reconsider its determination that Section 251(b)(3) of the 1996 Act

ensures dialing parity for competing providers, whether they provide local exchange service, intraLATA toll service, or both. The Commission correctly interpreted Section 251(b)(3) in accordance with Congressional intent to facilitate local exchange competition, rather than restrict it. A reinterpretation is neither compelled by the language of Section 251(b)(3), nor consistent with the intent of the 1996 Act.

The Commission should also reject petitions that seek to diminish the access of potential competitors to essential numbering resources and service support functions. In particular, the Commission should refuse to reconsider its determination that the term "non-discriminatory access" as used in Section 251(b)(3) requires access that is equal in quality to that the ILEC provides itself. The Commission's interpretation is the only one that is consistent with both the overarching Congressional intent to establish a pro-competitive policy framework and with the specific intent of provisions in Sections 251(b) and 251(c) to ensure nondiscrimination.

Finally, the Commission should reject those petitions that attempt to undermine the neutral framework for number administration established in part by the Second Report and Order.

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OPPOSITION OF AT&T CORP. TO PETITIONS FOR RECONSIDERATION

AT&T Corp. ("AT&T") hereby submits its opposition to and comments on the petitions for reconsideration (the "Petitions") of the Commission's Second Report and Order (the "Second Report and Order"), released August 8, 1996.¹

INTRODUCTION

The Second Report and Order establishes a number of conditions that will facilitate competition in the provision of local exchange and toll services, and complements and reinforces provisions of the First Report and Order intended to ensure non-discriminatory

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order, FCC 96-325, released August 8, 1996. Annexed as Appendix A is a list of parties submitting petitions for reconsideration of the Second Report and Order, and the abbreviations used to refer to these parties.

interconnection of telecommunications facilities and networks.² In particular, the Second Report and Order requires LECs by a date certain to provide dialing parity to local exchange and toll competitors through the full 2-primary interexchange carrier ("Full 2-PIC") method; requires LECs to provide competing exchange and toll carriers access to operator services, telephone numbers, directory listing, and directory assistance on the same non-discriminatory rates, terms, and conditions that the LEC affords to itself; and establishes principles for recovery of the costs of administration of numbering resources under the North American Numbering Plan ("NANP").³ When fully and properly implemented, these requirements will reduce operational barriers to exchange and toll competition and benefit telecommunications customers by making essential components of local exchange service available to all competitors on an equal basis.

The Petitions seek in various ways to limit, constrain, or muddle dialing parity and non-discrimination obligations that are crucial to the 1996 Act's purpose to promote vigorous local exchange and toll competition. A

² See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-333, released August 8, 1996.

³ See Second Report and Order, paras. 49-50; 101-105; 342-343.

number of incumbent local exchange carriers ("ILECs") request "clarification" of basic dialing parity requirements in ways that will reduce opportunities for competition in the vital intraLATA toll markets these ILECs currently monopolize. ILECs also request reconsideration and alteration of the Commission's rulings regarding non-discriminatory access to operator services, directory assistance, and directory listing that will limit the ability of competitors to offer local service functions and thus prevent them from competing equally for customers. Finally, a number of ILECs ask the Commission to alter mechanisms for recovery of costs administration to favor incumbents rather than to ensure competitive neutrality among carriers. The Commission should reject these attempts to curtail the competitive opportunities established by the Second Report and Order. These Petitions offer no facts or analysis that show how the Second Report and Order departed from the requirements of the 1996 Act, or show how the requested relief will further promote exchange competition. They thus offer no basis for reconsideration of the Second Report and Order, and should accordingly be denied.

I. THE COMMISSION SHOULD CONFIRM DIALING PARITY REQUIREMENTS APPLICABLE TO ALL LECS.

The assault on the Commission's pro-competitive dialing parity rules comes from various angles. Some ILECs ask the Commission to reconsider its determination

to adhere to the plain meaning of the 1996 Act by fully extending dialing parity requirements into local exchange and toll markets. Other ILECs request that the Commission "clarify" (i.e., narrow the scope of) its decision regarding treatment of customers who do not select a toll carrier after implementation of a toll dialing parity plan.⁴ Still other ILECs ask that the Commission "clarify" (i.e., substantially modify) its decision regarding treatment of interstate, intraLATA toll traffic.⁵ The Commission should reject each of these attempts to limit the scope of the dialing parity requirements of the Second Report and Order.

A. The Commission Should Affirm Its Dialing Parity Rules Regarding Notification and Assignment of Customers.

The Second Report and Order provides that LECs will comply with state rules governing notification to customers regarding implementation of toll dialing parity,

⁴ See Ameritech Petition, p. 3. The Second Report and Order states that "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)". Second Report and Order, para. 4, n.13.

⁵ Interstate, intraLATA toll traffic is toll traffic that crosses state boundaries but does not cross LATA boundaries.

whether these customers are "new" to, or have previously received service from, the LEC.⁶ In addition, the Second Report and Order prohibits a LEC from "automatically assigning" to itself new customers who have not affirmatively selected a toll provider, and requires such customers to "dial around" to place intraLATA toll calls until they make a choice.⁷ The clear import of the Commission's framework is that existing customers will be informed of choices in accordance with rules adopted by state commissions, but will remain with their current intraLATA toll provider until they indicate otherwise. These rules strike a careful balance, promoting customer choice in selection of toll carriers while averting undue customer confusion and affording individual states the flexibility to determine precise methods of customer notification.

Predictably, a few ILECS attempt to disrupt this balance with a reinterpretation of the Commission's rules. GTE, for example, requests that the Commission interpret the Second Report and Order to permit a LEC not only to automatically assign existing customers to its toll

⁶ See Second Report and Order, para. 80.

⁷ Id. The Second Report and Order permits states to adopt either intraLATA toll or intrastate toll dialing parity requirements, and requires each state to adopt competitively neutral notification rules for the toll plan it implement. See Id., paras. 37, 80.

services, but to refrain altogether from informing existing customers of toll dialing parity choices.⁸ GTE even goes so far as to suggest that this result is compelled by the record and the Commission's reasoning in the Second Report and Order.⁹

GTE's assertions are neither compelled nor supported by the record. Contrary to GTE's suggestion, the Commission afforded state commissions wide latitude to adopt the customer notification procedures best suited to particular state circumstances¹⁰ and did not command or prohibit the use of any particular form of customer notification.¹¹ Moreover, the Commission correctly recognized that customer education is an essential part of any dialing parity implementation plan, and drew no distinction between new and existing customers for purposes of customer notification rules. Accordingly,

⁸ See GTE Petition, p. 5 ("GTE does not object to new customers being notified of their ability to select alternate local exchange, intraLATA, and interLATA carriers if they so desire. However, requiring LECs to notify preexisting customers of such options effectively would require balloting, an option the Commission expressly rejected . . .")

⁹ Id.

¹⁰ Second Report and Order, para. 80.

¹¹ Id. It is extremely ironic that GTE -- which has criticized the Commission for limiting state authority on such issues as pricing of unbundled network elements -- requests here that the Commission pre-empt and preclude state rules ensuring notification of dialing parity implementation to existing customers.

consistent with the Second Report and Order, states are free to choose their own customer notification methods, which will be applicable to both "new" and existing customers. GTE offers no legitimate reason to alter this framework or otherwise to exempt LECs from pro-competitive state notification requirements.

NYNEX makes an equally unacceptable request for reconsideration. NYNEX suggests that the Commission should permit a LEC to automatically assign or "default" new customers to itself in the event they do not affirmatively select an intraLATA toll carrier.¹² The Second Report and Order, however, embodies the Commission's commitment to maximize opportunities for competition in the provision of toll services to new LEC customers by ensuring such customers make a conscious intraLATA toll choice.¹³ Central to this commitment is the requirement that new customers be required to "dial around" if they fail to choose an intraLATA toll provider. NYNEX offers no reason to conclude that customer choice would be better served by altering this requirement. Indeed, NYNEX's suggested alternative -- reliance on notifications to ensure customer choice -- would clearly reduce LEC incentives to educate existing customers and

¹² See NYNEX Petition, p. 7.

¹³ See Second Report and Order, para. 81.

increase the likelihood such customers would be assigned to their current LECs without understanding their presubscription choices. Consistent with its commitment to increase opportunities for intraLATA toll competition, the Commission should reject NYNEX's proposal to reduce educational incentives in this way.

B. The Commission Should Affirm the Applicability of Dialing Parity Requirements to Providers of Local Exchange Service and Providers of Toll Service.

Ameritech requests that the Commission reconsider its determination that Section 251(b)(3) of the 1996 Act ensures dialing parity for competing providers, whether they provide local exchange service, intraLATA toll service, or both.¹⁴ Essentially, Ameritech asks the Commission to eviscerate Section 251(b)(3) by reading the section to require carriers to offer both local exchange service and toll service in competition with a LEC before receiving dialing parity from that LEC.

This reinterpretation is inconsistent with the intent of the 1996 Act, as the Commission correctly recognized,¹⁵ because it would throttle competition in local exchange and intraLATA markets before it could develop. Small local exchange carriers would be deprived of dialing parity -- even for their local services --

¹⁴ See Ameritech Petition, p. 3.

¹⁵ See Second Report and Order, para. 4.

unless they also entered toll markets; regional and national toll carriers would be deprived of dialing parity for intraLATA toll services unless they also entered the local exchange. Such a requirement would erect precisely the kind of unnecessary regulatory barrier to entry that the 1996 Act and the Second Report and Order sought to eliminate.¹⁶

Nor is Ameritech's interpretation compelled by the language of Section 251(b)(3). Section 251(b)(3) is most reasonably read to place a dual obligation on the LEC providing (rather than receiving) dialing parity: that LEC must provide dialing parity both to "competing providers of telephone exchange service and [to competing providers of] telephone toll service." This construction is consistent with the Commission's interpretation of the term "and" in other local competition provisions of the 1996 Act,¹⁷ and correctly recognizes that Congress employed the term "and" to prevent LECs from claiming that

¹⁶ See Id., para. 30 ("[c]oncerning [the] proposal to require competitive providers of intraLATA toll service to serve an entire LATA . . . [f]or the Commission to make LATA-wide or state-wide service a precondition into that LATA or state would be to erect a major legal barrier entry, particularly for smaller telecommunications service providers, that is contrary to the basic thrust of the 1996 Act.")

¹⁷ See, e.g., First Report and Order, para. 184, (interpreting phrase "telephone exchange service and exchange access" to mean (for purposes of Section 251(c)(2) of the 1996 Act) "telephone exchange service as well as exchange access").

they can comply with Section 251 standards by accommodating one of two categories of competitors, but not both.¹⁸ The Commission correctly interpreted Section 251(b)(3) in accordance with Congressional intent to facilitate local exchange competition, rather than restrict it. Ameritech offers no basis on which to reconsider this judgment.¹⁹

C. The Commission Should Reaffirm Its Rulings Regarding Interstate, IntraLATA Traffic.

One ILEC, BellSouth, asks the Commission to "clarify" that LECs are not obligated to provide dialing parity for interstate, intraLATA traffic until commissions in both states have implemented intraLATA toll dialing parity plans.²⁰ This request is both illogical and anti-competitive.

In the Second Report and Order, the Commission chose to grant state commissions the flexibility to implement dialing parity plans within their borders, consistent with the Commission's rules and the

¹⁸ See, e.g., *id.*

¹⁹ Ameritech's construction appears to be based on an assumption that Congress sought to use Section 251(b)(3) to ensure that ILECs are required to provide dialing parity only to a limited set of telecommunications competitors. See Ameritech Petition, p. 6. This assumption wholly ignores the fact that Section 251(b)(3) establishes dialing parity requirements for all LECs, not merely incumbents. See 1996 Act, Section 251(b)(3).

²⁰ See BellSouth Petition, p. 6.

requirements of the 1996 Act.²¹ This flexibility encompasses the ability to adopt dialing parity implementation plans in states where some or all LATAs traverse state borders.²² BellSouth's request would hold dialing parity in one state jurisdiction captive to implementation of dialing parity in another, delaying dialing parity and allowing states where intraLATA, interstate toll traffic terminates to dictate when dialing parity is implemented in states where that traffic originates. The Commission rejected this threat to timely and orderly dialing parity implementation in the Second Report and Order, and BellSouth offers no legitimate basis for reversing course here.

II. THE COMMISSION SHOULD REJECT ATTEMPTS TO CURTAIL THE OBLIGATIONS OF LECS TO PROVIDE NON-DISCRIMINATORY ACCESS TO OPERATOR SERVICES, DIRECTORY ASSISTANCE, AND DIRECTORY LISTING.

A number of ILECs also ask the Commission to revise the Second Report and Order in ways that will diminish the access of potential competitors to essential numbering resources and service support functions. One ILEC asks the Commission to reconsider its determination that the term "non-discriminatory access" as used in

²¹ See Second Report and Order, paras. 37, 41.

²² See Id., para. 41 ("[W]hen LATA boundaries encompass parts of two states, we permit the LEC to implement in each state the procedures that that state approved for implementing toll dialing parity within its borders.")

Section 251(b)(3) requires access that is equal in quality to that the ILEC provides itself,²³ while another asks the Commission to shift the method by which discrimination will be proved.²⁴ Another ILEC repeats the request that the Commission limit LECs' "branding" obligations²⁵ for operator services to carriers requesting interconnection.²⁶ These requests continue to lack merit, and should be rejected now as they were rejected before in the Second Report and Order.

Ameritech reiterates the tired claim that "non-discriminatory access" as used in Section 251(b)(3) contains some dark, hidden meaning -- permitting LECs to discriminate against other interconnecting service providers so long as the LEC discriminates against all potential competitors equally.²⁷ This claim was properly rejected by the Commission in the Second Report and Order, because it is inconsistent with both the overarching

²³ See Ameritech Petition, p. 7.

²⁴ See SBC Petition, p. 10.

²⁵ "Branding" of operator services refers to the identification by a LEC of the provider of such operator services, whether the provider is a LEC competitor reselling LEC services or a LEC competitor using LEC facilities to provide its own operator services. See Second Report and Order, paras. 123, 124.

²⁶ See NYNEX Petition, p. 15.

²⁷ See Ameritech Petition, pp. 7-8.

Congressional intent to establish a pro-competitive policy framework and with the specific intent of provisions in Sections 251(b) and 251(c) to ensure nondiscrimination.²⁸ Ameritech's current claims add nothing to alter the Commission's prior, correct analysis.²⁹

SBC asserts that LECs should not be required, upon complaints by other LECs, initially to offer evidence of non-discriminatory treatment.³⁰ Rather, according to SBC, the service provider seeking access to operator service and directory assistance functions should, on its own, provide conclusive proof of discrimination. This proposal would require parties with no knowledge of a LEC's network -- and no baseline of non-discriminatory

²⁸ Second Report and Order, para. 101.

²⁹ Ameritech argues, for example, that the term "non-discriminatory access" as used in Section 251(b)(3) must impose some lesser obligation, because the term differs from other terms used in Section 251(c)(2) to ensure non-discrimination. This argument ignores the fact that the Commission could just as fairly interpret the phrase "non-discriminatory access" to impose different and greater requirements. The Commission, quite correctly, chose neither formalistic path and interpreted the provisions of Sections 251 and 252 based on their overall context. Also unavailing are Ameritech's assertions (pp. 10-11) concerning the effect of state regulations, market conditions, and economic incentives on the interpretation of "non-discriminatory access." These assertions do not argue that Section 251(b)(3) should be read narrowly; they argue instead that it should be ignored entirely -- an interpretation that is obviously foreclosed by the express provisions of the Act.

³⁰ See SBC Petition, p 10.

treatment for comparison -- to establish the nature and fairness of a competing LEC's various access arrangements. SBC offers no reason for the Commission to undermine rules intended to ensure non-discriminatory access with such unworkable evidentiary requirements.

Finally, NYNEX requests that the Commission "clarify" that "rebranding" of operator services is required only for carriers seeking interconnection, and that the "timing" (*i.e.*, when and whether it will be performed) of such branding be left to negotiation or arbitration. NYNEX's request for clarification is inconsistent with the provisions of the 1996 Act. A branding obligation imposed only for "interconnecting" LECs would afford no protection to resale carriers and would produce the kind of differential treatment that the "non-discriminatory, access" provision of Section 251(b)(3) is expressly intended to prevent. Relying on voluntary negotiations or arbitration to resolve "timing" would similarly exclude resellers from key benefits and protections of Section 251(b)(3).

III. THE COMMISSION SHOULD REJECT ATTEMPTS TO UNDERMINE NEUTRAL NUMBER ADMINISTRATION.

A number of Petitions confirm AT&T's showings of the ways in which the Second Report and Order should be interpreted to further promote the use of numbering resources. Petitions confirm, for example, that the Commission's rules should provide for fully equitable

distribution of central office ("CO" or "NXX") codes when numbering plan area ("NPA") code relief plans are implemented,³¹ and that permanent number portability, service-neutrality, and mandatory ten-digit dialing are minimum requirements for implementation of an "overlay" NPA relief plan.³²

A few petitions, however, attempt to undermine neutral number administration as established by the Second Report and Order. One petition requests that the Commission alter dialing requirements for implementation of an overlay relief plan. Two other petitions request that the Commission alter the mechanism for neutral recovery of the costs of number administration. The Commission should alter neither of its well-considered determinations.

NYNEX requests that the Commission reconsider the requirement that NPA overlay relief plans be implemented only if there is "mandatory ten-digit local dialing by all customers between and within area codes in the areas covered by the new code."³³ Instead, NYNEX

³¹ See MFS Petition, pp. 2-10; TCG Petition, pp. 3-7 (showing that the reservation of a single NXX code per requesting carrier when an NPA code relief plan is implemented will not allow all competing carriers to provide service on an equal basis).

³² See Cox Petition, pp. 1-7; MFS Petition, pp. 2-10; TCG, pp. 3-7.

³³ NYNEX Petition, p. 13 (footnote omitted).

would have the Commission require ten-digit dialing between NPAs (i.e., between the few customers in the "new" and the many customers in the "old" NPA), but allow seven-digit dialing within NPAs (i.e., between "old" and "other old" customers) in the "old" NPA.³⁴ This proposal would defeat the basic purpose of the Commission's requirement, which is to ensure that customers served out of the "new" NPA are not disadvantaged in dialing convenience by the NPA relief plan. The Second Report and Order ensured this competitively neutral result, and NYNEX offers no reason for the Commission now to abandon it.³⁵

BellSouth and SBC request that the Commission alter its determination that carriers should contribute to the recovery of the costs of number administration based on their gross revenues, reduced by payments to other carriers. BellSouth requests that contribution be based on total revenues less payments to and from other

³⁴ Id.

³⁵ It is also worth noting that the Commission is fully empowered under the 1996 Act to develop and implement policies for implementation of NPA plans, including "overlay" NPA relief plans. In this regard, the Commission's jurisdiction is plenary. See 1996 Act, Section 251(e)(1). Moreover, contrary to the suggestion of some Petitions, see Pa. PUC Petition, p. 4, the Commission's current exercise of this authority has not prevented states from permitting customers within their jurisdictions to employ seven-digit dialing for all local calls. State commissions wishing to ensure such dialing may easily do so by adopting geographic "split" NPA relief plans rather than "overlay" relief plans.

carriers,³⁶ while SBC requests that contribution be based on "elemental access lines" ("EALs").³⁷ Each of these requests should be rejected. The Commission carefully considered the economic impacts of its cost recovery mechanism in the Second Report and Order,³⁸ weighed alternative methods,³⁹ and chose net revenues as the most equitable means. BellSouth and SBC offer nothing that could change the Commission's conclusion.

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³⁶ See BellSouth Petition, p. 7.

³⁷ See SBC, p. 20.

³⁸ Second Report and Order, para. 342.

³⁹ Id.

APPENDIX A

PARTIES FILING PETITIONS FOR RECONSIDERATION
AND/OR CLARIFICATION

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Ameritech

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BellSouth Corporation and BellSouth Telecommunications,
Inc. ("BellSouth")

Cox Communications, Inc. ("Cox")

GTE Service Corporation ("GTE")

MCI Telecommunications Corporation ("MCI")

MFS Communications Company, Inc. ("MFS")

National Rural Telecom Association ("NRTA")

National Telephone Cooperative Association ("NTCA")

New York State Department of Public Service ("NY PSC")

NYNEX Telephone Companies ("NYNEX")

Omnipoint Communications, Inc. ("Omnipoint")

Organization for the Protection and Advancement of Small
Telecommunications Companies ("OPASTCO")

Pacific Gas and Electric Company ("PG&E")

Paging Network, Inc. ("Paging Network")

Pennsylvania Public Utility Commission ("Pa. PUC")

U.S. Telephone Association ("USTA")

The Washington Post Company ("Washington Post")

CERTIFICATE OF SERVICE

I, Ann Marie, do hereby certify that on this 20th day of November, 1996, a copy of the foregoing "Opposition Of AT&T Corp. To Petitions For Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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